

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Petition of)
VERIZON HAWAII INC.)
For Approval of MCIMETRO ACCESS)
TRANSMISSION SERVICES LLC'S)
Adoption of the Negotiated)
Interconnection Agreement)
Between ICG Telecom Group Inc.)
and Verizon California Inc.)
_____)

DOCKET NO. 03-0199

DECISION AND ORDER NO. 20585

Filed Oct. 22, 2003
At 2:00 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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OF THE STATE OF HAWAII

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DECISION AND ORDER

I.

Introduction

VERIZON HAWAII INC. ("Verizon Hawaii") requests commission approval of MCIMETRO ACCESS TRANSMISSION SERVICES LLC'S ("MCIm") adoption of the negotiated interconnection agreement between ICG Telecom Group Inc. ("ICG") and Verizon California Inc. ("Verizon California") ("Agreement") for the provision of telecommunications service in Hawaii, subject to the conditions and reservations set forth in the adoption letter dated June 23, 2003 ("Adoption Letter"). Verizon Hawaii filed the petition on July 10, 2003, and attached for our review under Hawaii Administrative Rules ("HAR") § 6-80-54: (1) the Adoption Letter signed by MCIm and Verizon Hawaii (collectively, the "Petitioners"); and (2) the Agreement.

Verizon Hawaii served the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY

("Consumer Advocate") with copies of the petition and the attachments.¹ The Consumer Advocate served the Petitioners with information requests ("IRs") on August 22, 2003. Verizon Hawaii filed the Petitioners' IR responses on September 5, 2003.

The Consumer Advocate informs the commission that it does not object to the approval of Verizon Hawaii's petition with qualifications, and recommends certain modifications to the Agreement by a Statement of Position filed on September 26, 2003 ("Statement of Position"). Verizon Hawaii responds to the Statement of Position on behalf of the Petitioners by letter filed on October 2, 2003. The Petitioners also extend the time for the commission to render its decision on the Agreement from October 8, 2003, to October 22, 2003, through their October 2, 2003 letter ("Extension Letter").

II.

Background

A.

Petitioners' Agreement

Verizon Hawaii is a corporation duly organized and existing under and by virtue of the laws of the State of Hawaii ("State"). It engages in the provision of varied telecommunications services to its customers and the general

¹No person moved to intervene or participate in this docket.

public within its chartered territory in the State. MCIm is an authorized provider of telecommunications services in the State.²

The Agreement sets forth the terms and conditions for various aspects of telecommunications services between Verizon Hawaii and MCIm including, but not limited to, interconnection, resale, network element, and collocation attachments. The Adoption Letter enumerates Verizon Hawaii's position on certain matters with regards to the applicability of the Agreement to the Petitioners. We note that the signature page of the Adoption Letter contains MCIm's reservations as to certain positions taken by Verizon Hawaii. Specifically, MCIm states the following:

Reviewed and countersigned as to points A, B, C, and D of paragraph 1. MCIm acknowledges Verizon[Hawaii]'s position statements of paragraphs 2 through 8 above ("Verizon[Hawaii]'s Statements of Position"), but MCIm (i) disagrees with them, (ii) reserves all rights to dispute any and all of Verizon[Hawaii]'s Statements of Position, and (iii) asserts that Verizon[Hawaii]'s Statements of Position do not, and should not be used to, change or alter the underlying Verizon California Terms adopted by MCIm. Further, MCIm reserves all rights it may have under the Verizon California Terms or under applicable law to challenge any rates attached hereto which have not been approved by order of the Hawaii Commission.

B.

Consumer Advocate's Position

The Consumer Advocate concludes that the Agreement appears to not discriminate against MCIm or other

²See, Decision and Order No. 15898, filed on September 10, 1997, in Docket No. 97-0190.

telecommunications carriers, and that the Agreement is consistent with the public interest, convenience, and necessity. While the Consumer Advocate conveys that there are certain differences in language, terms, and conditions between the Agreement and other filed interconnection agreements, it states that the observed differences are not sufficient to warrant an objection. Nevertheless, the Consumer Advocate recommends that Verizon Hawaii make appropriate text and language changes as listed in Appendix A of the Statement of Position and update the Agreement with the rate changes submitted by the Petitioners on September 5, 2003.

C.

Petitioners' Response

Verizon Hawaii quotes portions of the Statement of Position conveying the Consumer Advocate's finding that the Agreement: (1) does not discriminate against MCI or any other carrier with agreements with Verizon Hawaii; and (2) is consistent with the public interest, convenience, and necessity and states that the commission may only reject all or any portion of the agreement on "a contrary finding of those two grounds" under HAR § 6-80-54(b). Verizon Hawaii asserts that the Petitioners "do not agree to implement" the changes recommended by the Consumer Advocate, and contends that the rule does not permit modifications to negotiated agreements.

III.

Findings and Conclusions

A.

Petitioners' Waiver

The commission under HAR § 6-80-54(c) is required to approve or reject "an agreement adopted voluntarily by negotiation" within 90 days after the agreement is submitted ("90-day Review"). The rule also states that the agreement will be deemed approved if the commission fails to act within the prescribed time. If not for the Petitioners' Extension Letter, the 90-day deadline for the commission to act on the Agreement would have expired on or about October 8, 2003. The Extension Letter is an intentional and voluntary waiver of the 90-day Review requirement.

Additional time to review the Petitioners' filings and the Consumer Advocate's position was needed. We find good cause to approve the Petitioners' voluntary waiver of the 90-day Review requirement, and conclude that the Petitioners' waiver should be approved.

B.

Petitioners' Agreement

HAR § 6-80-54 requires all agreements regarding access, interconnection, unbundling, and network termination adopted by negotiation or arbitration be submitted to the commission for review and approval. The Agreement is not an arbitrated agreement but one that was negotiated by ICG and Verizon

California, and the Adoption Letter, signed by the Petitioners, appears to be a "negotiated" contract between MCI and Verizon Hawaii. Accordingly, we will treat the Agreement as a negotiated interconnection agreement and conduct our review under HAR § 6-80-54(b).

HAR § 6-80-54(b) specifically states that we may reject a negotiated interconnection agreement if we find:

- (1) The agreement, or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or
- (2) The implementation of the agreement, or any portion of the agreement, is not consistent with the public interest, convenience, and necessity.

The concerns and issues raised by the Consumer Advocate do not appear to warrant a rejection of the Agreement under HAR § 6-80-54(b).³ The commission concurs with the Consumer Advocate's overall finding that the Agreement does not appear to discriminate against other telecommunications carriers, and that the implementation of the Agreement is consistent with the public interest, convenience, and necessity. Nonetheless, the commission believes that the Petitioners should revise their composite Reciprocal Compensation Traffic Tandem and Tandem Transit Service Charge rates to the corrected rates for these charges as identified in the Petitioners' response to the

³The commission also recognizes that the Petitioners have not agreed to a substantial portion of the conditions contained in the Adoption Letter as evidenced by MCI's qualified acceptance of the Adoption Letter. Thus, the Petitioners have yet to resolve much of their differences.

Consumer Advocate's IR No. 3.⁴ The Petitioners conceded that the rates set forth as Appendix II to the Adoption Letter for these charges were miscalculated.⁵

The commission recognizes that negotiated interconnection agreements are contracts between the parties that they agree to abide by. We, nonetheless, believe that the commission has the authority to revisit the concerns raised by the Consumer Advocate if these matters later cause confusion and conflict between the Petitioners, subject to the provisions of the Agreement. Specifically, we have the authority to intervene and reexamine the Agreement under Section 252(e)(3) of the Telecommunications Act of 1996 (the "Act") and Hawaii Revised Statutes ("HRS") § 269-7(a).⁶ The commission also recognizes that approval of the Agreement is in the public interest since it should help increase competition in the State's telecommunications market by providing MCIIm with the avenue to operate in Hawaii.

⁴See, Petitioners' IR responses filed on September 5, 2003, CA-IR-3, at 2-4.

⁵*Ibid.*

⁶Section 252(e)(3) of the Act preserves the authority of state commissions to establish and enforce state laws in its review of an interconnection agreement. Under HRS § 269-7(a), the commission is empowered to, among other things, examine the conditions of the public utility, all of its financial transactions, and the utility's business relations with other persons, companies, or corporations. This section of State law is broad, it grants the commission with the authority to examine all transactions that affect or may affect the public whom the utility serves. The commission also recognizes, however, that the Petitioners agree to have California law apply to the Agreement, which may later prove problematic if the Petitioners come to this commission to resolve disputes under the Agreement.

We conclude that the Agreement and MCIm's adoption of the Agreement, subject to the conditions and reservations set forth in the Adoption Letter, should be approved. Nonetheless, our approval of the Agreement and MCIm's adoption of the Agreement herein should not be construed as setting precedent on future similar filings since we recognize that certain positions taken by Verizon Hawaii in the Adoption Letter may be inconsistent with past commission decisions. We reserve our right to review all future terms and conditions of negotiated interconnection agreements on a case-by-case basis under the requirements and parameters of the Act, HAR § 6-80-54, and other State laws, rules, and regulations.

IV.


Orders


THE COMMISSION ORDERS:

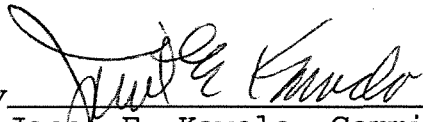
1. The Petitioners' voluntary waiver of the 90-day Review requirement of HAR § 6-80-54(c) is approved.
2. The Agreement and MCIm's adoption of the Agreement, subject to the conditions and reservations set forth in the Adoption Letter, are approved under HAR § 6-80-54(b).
3. The Petitioners to review their Reciprocal Compensation Traffic Tandem and Tandem Transit Service Charge rate calculations, and recommends that Petitioners revise these rates to reflect the corrected rates set forth in their September 5, 2003 response to the Consumer Advocate's IR No. 3.
4. This docket is closed.

DONE at Honolulu, Hawaii this 22nd day of October,
2003.

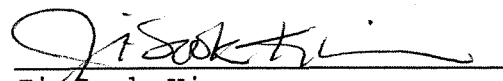
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

03-0199.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20585 upon the following Petitioners, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

JOEL K. MATSUNAGA, VICE PRESIDENT-EXTERNAL AFFAIRS
VERIZON HAWAII INC.
P. O. Box 2200, A-17
Honolulu, HI 96841

DAYNA GARVIN
MCIMETRO ACCESS TRANSMISSION SERVICES LLC
2678 Bishop Drive, Suite 200
San Ramon, CA 94583



Karen Higashi

DATED: October 22, 2003